

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Rules to Establish Part 27, the)
Wireless Communications Service)
("WCS"))

GN Docket No. 96-228

To: The Commission

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COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Pursuant to Section 1.415 of the Commission's Rules, Puerto Rico Telephone Company ("PRTC") hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") issued in this proceeding.¹ The Commission has requested comments regarding the use of the 2305-2320 and 2345-2360 MHz bands for a new Wireless Communications Service ("WCS"). PRTC supports the Commission's proposal to make spectrum available for both fixed and mobile services, and the rules implemented by this proceeding should ensure maximum flexibility for use by the licensee.

I. THE REGULATIONS GOVERNING WCS LICENSING SHOULD PERMIT FLEXIBLE USES FOR THE SPECTRUM

In the Omnibus Consolidated Appropriations Act of 1997, Congress directed the Commission to reallocate the bands to wireless services that are consistent with international agreements concerning spectrum allocations. The Commission has read this mandate broadly, indicating that these bands would be allocated to the fixed, mobile, and radiolocation services on a

1. FCC 96-411, released November 12, 1996.

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primary basis. PRTC agrees with the Commission's conclusion that this policy "will foster the provision and mix of WCS services most desired by the public."²

To best meet this goal, the WCS licensee should be able to determine which service is likely to be most beneficial for the customers in the licensing area. In PRTC's experience, different services may be required in different markets based on a number of factors, including the saturation of the market or of the assigned frequencies for a given service. The proposed spectrum should be available to provide both fixed and mobile services, but the licensee should be allowed to determine which particular services to provide according to the demands of the competitive market in its licensing area. For example, some markets may require increased competitive alternatives for mobile services, like for one-way and two-way paging, while others may need competitive options for fixed services. In still other markets, it may be appropriate to provide a combination of fixed and mobile services pursuant to a WCS authorization.

Moreover, flexibility in the usage of this spectrum would be consistent with the Commission's Order allowing many CMRS providers to use their spectrum to offer fixed services on a co-primary basis with mobile services.³ As proposed for WCS, the

2. NPRM at ¶ 9.

3. Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, First Report and Order, FCC 96-283 (rel. August 1, 1996).

Commission found in its flexible service offering proceeding that CMRS licensees may offer mobile services, fixed services, or combinations of the two on their licensed frequencies. This change in the Commission's rules was intended to "allow CMRS providers greater flexibility to provide innovative wireless services to meet consumer demands."⁴ The Commission's rationale in that proceeding certainly applies here. Therefore, the WCS license should not be limited to the provision of a particular fixed or mobile service.

II. THE WCS LICENSE SHOULD BE GRANTED ON AN MTA BASIS

The WCS licenses should be granted according to Major Trading Areas ("MTAs").⁵ This outcome will provide the best opportunity for increased competition between licensees for existing and new services. Considering that recent PCS licenses have been auctioned according to MTAs, the auctioning of WCS licenses on the same basis may provide in some areas yet another source of competition for wireless services. In addition, the MTA is a large enough area such that an incumbent licensee for mobile or fixed services that is awarded an MTA-based WCS license may use the license to complement or expand existing services in currently licensed service areas (i.e., site-based licensing areas for paging and MSAs or RSAs for cellular).

4. Id. at ¶ 3.

5. The Commission has suggested that the geographic areas could be based on MTAs, regional service areas, economic areas, or on a nationwide basis. See NPRM at ¶ 10.

If licenses are granted on larger geographic areas, participation in the auction by small providers may be limited. The financial resources that would be required to acquire a national resource would prevent untold numbers of potential bidders from participating in WCS auction. In addition, smaller entities may have difficulty amassing the financial and technical capabilities to build a system in an area larger than an MTA, nor do they necessarily have the incentive to providing service or maintain a system in a larger market area.

III. LICENSES SHOULD BE GRANTED IN 10 MHZ BLOCKS

If spectrum cap rules are applied, WCS licenses should be allocated in 10 MHz increments. 10 MHz blocks may provide the best opportunity to ensure that "firms with the most experience and innovative technologies" can participate in the auction,⁶ because current CMRS licensees could still bid for WCS licenses. This size block is suitable for both one-way and two-way services and would facilitate the availability of equipment at alternative frequencies for affordable prices. With 10 MHz blocks, a licensee may choose to offer one- or two-way paging, wireless local loop service, or PCS. Availability of frequencies in this block for wireless local loop service would be particularly useful in Puerto Rico where the rugged terrain makes it virtually impossible to offer phone service to some customers through traditional wireline services. In addition, a licensee could

6. See NPRM at ¶ 25.

offer a combination of services over 10 MHz blocks, a practice that is likely to become more common as new technologies permit better and more efficient frequency use.

IV. THE WCS LICENSES SHOULD NOT COUNT AGAINST THE CMRS SPECTRUM CAP

The Commission has proposed that there be no restriction on licensee eligibility, other than the existing foreign ownership restrictions.⁷ To ensure that eligibility for the WCS licensee to offer a myriad of services is largely unrestricted, WCS spectrum should not be counted against the 45 MHz spectrum cap.⁸ If WCS licenses were to be applied toward the spectrum cap, flexibility for licensees and competitive alternatives would be lost.

Moreover, to the extent that a licensee chooses to utilize a WCS license for a fixed service, application of the spectrum cap would be inappropriate. The spectrum cap was established "as a minimally intrusive means of ensuring that the mobile communications marketplace remains competitive and retains incentives for efficiency and innovation."⁹ If a licensee uses its license for anything other than cellular, PCS, or SMR, then the stated rationale for applying the spectrum cap does not

7. NPRM at ¶ 23.

8. See NPRM at ¶¶ 24-25.

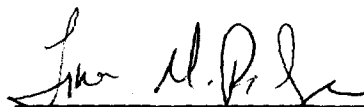
9. Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, 11 FCC Rcd 10187, 10207 (1996) (citing CMRS Third Report and Order, 9 FCC Rcd 7988, 8100 (1994)) (emphasis added).

apply. Therefore, because the WCS licenses will be made available for both fixed and wireless services, the spectrum cap should not be applied. Given the number of service options that will be potentially available to a licensee, the individual calculation of spectrum to be counted toward the cap will be difficult to determine and track over time. Finally, application of the spectrum cap auctioning may limit the opportunity of a licensee in a particular area to offer the service that would most benefit consumers.

CONCLUSION

For these reasons, PRTC respectfully requests that the Commission offer spectrum for the Wireless Communications Service such that the licensee may have the flexibility to offer either fixed or mobile services on an MTA basis. The licenses should be awarded in 10 MHz blocks for maximum participation in the auction. Finally, WCS license should not count toward the spectrum cap.

Respectfully submitted,



Tina M. Pidgeon
DRINKER BIDDLE & REATH
901 15th Street, N.W., Suite 900
Washington, D.C. 20005
(202) 842-8800

Attorney for
PUERTO RICO TELEPHONE COMPANY

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